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SERVICE DATE - SEPTEMBER 9, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 2X)

NEW YORK CENTRAL LINES, LLC-ABANDONMENT
EXEMPTION-IN MIDDLESEX COUNTY, MA

Decided: September 8, 2004

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively, applicants) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 4.17 miles of railroad between milepost QBH-2.60 near Sherborn and milepost QBH-6.77 near Holliston, in Middlesex County, MA. Notice of the exemption was served and published in the Federal Register on August 2, 2001 (66 FR 40314-15).¹ On August 31, 2001, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the Town of Sherborn (Sherborn) and the Town of Holliston (Holliston) to negotiate an interim trail use/rail banking agreement with applicants for the right-of-way in this proceeding.² The negotiation period was extended several times; the latest extension was scheduled to expire on August 27, 2004.³

On September 7, 2004, CSXT filed a request to extend the NITU negotiating period for 6 months, until February 27, 2005. Applicants state that the parties have been unable to finalize

¹ The August 2, 2001 notice stated that, if consummation has not been effected by NYC's filing a notice of consummation by August 2, 2002, and there are no legal barriers to consummation at that time, the authority to abandon would automatically expire. The pendency of conditions, including trail use conditions, serves to extend the deadline for consummation of the abandonment until 60 days after the expiration, satisfaction, or removal of the legal or regulatory barrier to consummation.

² By decision served September 10, 2001, the proceeding was reopened and the exemption was made subject to the condition that NYC retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

³ The most recent extension of the negotiation period under the NITU was authorized by decision served February 10, 2004.

negotiations but desire to continue negotiations for the acquisition of the right-of-way. Additionally, CSXT requests an extension of the consummation notice filing deadline until April 28, 2005.⁴

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 64, 659 (8th Cir. 1996) cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to February 27, 2005,⁵ and the consummation notice filing deadline will be extended to April 28, 2005.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's request to extend the NITU negotiating period and its request for an extension of time to exercise abandonment authority is granted.
2. The negotiating period under the NITU is extended to February 27, 2005.
3. The authority to abandon must be exercised on or before April 28, 2005.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

⁴ Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

⁵ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).